

**REMARKS**

Applicants have carefully reviewed the Application in light of the Office Action transmitted October 5, 2009 ("*Office Action*"). Claims 1-31 are pending in the Application. The Examiner allows Claims 29-31, rejects Claims 1, 6-8, 13-15, 20-22, 27 and 28, and objects to Claims 2-5, 9-12, 16-19 and 23-26. Applicants respectfully request reconsideration of the pending claims and favorable action in this case.

**I. Examiner Interview**

Applicants, through its attorney, Kurt Pankratz (Reg. No. 46,977), interviewed the above application with Examiner Phuc H. Tran on December 1, 2009. Applicants and Examiner discussed the differences between the pending claims and the cited art. No agreement was reached.

**II. Allowable Subject Matter**

Applicants appreciate the Examiner's allowance of Claims 29-31 as noted in the *Office Action*. Applicants also appreciate the Examiner's indication that Claims 2-5, 9-12, 16-19, and 23-26 would be allowable if rewritten in independent form. *Office Action*, p. 4.

**III. Double Patenting**

The Examiner rejects Claims 1, 8, 15, 22, 29, and 31 of the present Application on the ground of nonstatutory obviousness-type double patenting as unpatentable over claims 1, 3, 4, 14, 27, 40, 41, 42, 53, and 54 of U.S. Patent Application No. 10/804,550 (now U.S. Patent No. 7,623,543) in view of U.S. Patent No. 4,663,748 to Karbowskiak ("*Karbowskiak*").

Although Applicants do not necessarily agree with or acquiesce to the Examiner's comments regarding the claims of the present Application or their purported relationship to the claims of U.S. Patent Application No. 10/804,550, Applicants submit the attached Terminal Disclaimer in compliance with 37 C.F.R. § 1.321(c) to overcome this rejection. Accordingly, Applicants respectfully request reconsideration and allowance of Claims 1, 8, 15, 22, 29, and 31.

The Examiner rejects Claims 1, 8, 15, 22, 29, and 31 of the present Application on the ground of nonstatutory obviousness-type double patenting as unpatentable over claims 1, 9, 17, 25, and 33 of U.S. Patent Application No. 10/804,528 (now U.S. Patent No. 7,529,267) in view of *Karbowiak*.

Although Applicants do not necessarily agree with or acquiesce to the Examiner's comments regarding the claims of the present Application or their purported relationship to the claims of U.S. Patent Application No. 10/804,528, Applicants submit the attached Terminal Disclaimer in compliance with 37 C.F.R. § 1.321(c) to overcome this rejection. Accordingly, Applicants respectfully request reconsideration and allowance of Claims 1, 8, 15, 22, 29, and 31.

#### **IV. Rejections under 35 U.S.C. § 102(b)**

The Examiner rejects Claims 1, 6-8, 13-15, 20-22, and 27-28 under 35 U.S.C. §102(b) as anticipated by U.S. Patent No. 5,418,785 to Olshansky ("*Olshansky*").

Consider Applicants' independent Claim 1, which recites:

An optical node comprising:

a data interface operable to receive data for transmission to a plurality of destinations;

a buffer operable to store the data;

a transmitting unit operable to couple to an optical transmission medium having a plurality of data channels and to selectively transmit optical signals on the data channels; and

a controller operable to receive a token authorizing transmission on one of the data channels, to determine a transmission allocation, wherein the transmission allocation represents an amount of time that the authorized data channel may be utilized to transmit the data, to determine a destination allocation, wherein the destination allocation represents a proportion of the transmission allocation that may be utilized to transmit the data to a particular destination, and to transmit the data on the authorized data channel in accordance with the transmission allocation and the destination allocation.

Among other aspects, *Olshansky* fails to disclose a controller operable "to determine a destination allocation, wherein the destination allocation represents a proportion of the

transmission allocation that may be utilized to transmit the data to a particular destination,” as Claim 1 requires.

With respect to Claim 1, Applicants note that the *Office Action* points to 2:65-66 and Figure 2 of *Olshanksy* as teaching these claimed aspects and asserts that *Olshanksy*’s “destination address” corresponds to the claimed “destination allocation.” *Office Action*, p. 2-3. Applicants respectfully submit that an “address” does not teach, suggest, or otherwise make obvious an “allocation.” The cited portion of *Olshanksy* recites “[a] node, receiving a token with its address in the destination address field for a particular subcarrier multiplexed channel.” *Olshanksy*, 2:65-66. Additionally, Figure 2 of *Olshanksy* merely discloses a destination address field. *Olshanksy*, Fig. 2. These cited portions, however, fail to describe, teach, or suggest “determin[ing] . . . a proportion of the transmission allocation that may be utilized to transmit the data to a particular destination,” as Claim 1 requires. Again, an “address” is not an “allocation.”

Applicants respectfully submit that Claim 1 recites that a “transmission allocation represents an amount of time that the authorized data channel may be utilized to transmit the data” and that in turn, a “destination allocation represents a proportion of the transmission allocation . . . .” In addition, the specification illustrates an exemplary embodiment which utilizes a scheduling algorithm where “[a] transmission allocation represents a period of time that [a] node [] may utilize a data channel to transmit local data on [a] network.” *See Original Application*, p. 13, ll. 19-32. In such an embodiment, destination allocations “represent[ing] proportions of the transmission allocation” can also be employed for data transmissions to particular destinations. *See Original Application*, p. 14, ll. 1-13. *Olshanksy* does not describe, expressly or inherently, a controller operable “to determine a destination allocation, wherein the destination allocation represents a proportion of the transmission allocation that may be utilized to transmit the data to a particular destination,” as Claim 1 requires.

Independent Claims 8, 15, and 22 include limitations that, for substantially similar reasons, are not disclosed by *Olshanksy*. Thus, *Olshanksy* does not disclose, expressly or inherently, every element of independent Claims 1, 8, 15, and 22. Accordingly, Applicants respectfully request reconsideration and allowance of Claims 1, 8, 15, and 22 and their respective dependent claims.

**CONCLUSION**

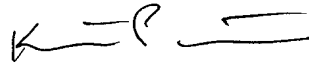
Applicants have made an earnest attempt to place this case in condition for allowance. For the foregoing reasons and for all other reasons clear and apparent, Applicants respectfully request reconsideration and allowance of this Application.

If the Examiner feels prosecution of the present Application may be advanced by a telephone conference, Applicants invite the Examiner to contact the undersigned attorney.

Although no fees are believed to be due, the Commissioner is hereby authorized to charge any fees or credit any overpayments to Deposit Account No. 02-0384 of Baker Botts L.L.P.

Respectfully submitted,

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Date: January 5, 2010

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